

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
JOYANN TORREZ,)	CASE NO. 04-64676 JPK
)	Chapter 7
Debtor.)	
*****)	
STACIA L. YOON, TRUSTEE,)	
)	
Plaintiff,)	
)	
v.)	ADVERSARY NO. 05-6007
)	
Daniel Perez,)	
)	
Defendant.)	

MEMORANDUM OF DECISION

This adversary proceeding came before the Court for trial on May 19, 2005. The plaintiff Stacia Yoon, Trustee of the Chapter 7 bankruptcy estate of JoyAnn Torrez, appeared in person; the defendant Daniel Perez, *pro se*, appeared in person.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b), 28 U.S.C. § 157(a) and N.D.Ind.L.R. 200.1(a) of the Rules of the United States District Court for the Northern District of Indiana. This adversary proceeding is not a "core" proceeding; however, by virtue of both parties' consent stated on the record at the trial, the Court has final judgment authority and jurisdiction pursuant to 28 U.S.C. § 157(c)(2) and N.D.Ind.L.R. 200.1(a)(3)(a).

The evidence in this case was provided by documentary exhibits, and by the testimony of JoyAnn Torrez and of Daniel Perez. The foundation of the indebtedness alleged by the Trustee to be owed to the bankruptcy estate is a Judgment for Dissolution of Marriage entered in case number 02 D 02524 in the Circuit Court of Cook County, Illinois, Domestic Relations Division under date of July 30, 2002, with respect to dissolution of the marriage of JoyAnn Torrez and Daniel Perez. Paragraph C of that judgment provides an obligation of Daniel Perez

to JoyAnn Torrez in the amount of \$6,000.00, which was to be paid in 24 equal monthly installments of \$250.00, beginning on September 7, 2002. In addition, paragraph I of the judgment provides a monetary obligation of \$1,500.00 to be paid by Daniel Perez to JoyAnn Torrez for one-half of the legal fees and costs which she incurred in the action.

Mr. Perez does not dispute the terms of the dissolution decree, and acknowledges that his obligation thereunder was \$7,500.00 in total. The dispute in this case concerns the extent to which Mr. Perez is entitled to credits for payments made or otherwise provided.

As to actual cash payments made by Mr. Perez to Ms. Torrez, the evidence was conflicting. Mr. Perez testified that he made three \$250.00 payments in cash to Ms. Torrez; Ms. Torrez testified, on the other hand, that she only received two \$250.00 cash payments. Mr. Perez acknowledged that he had no receipts for the payments. This is a classic case of conflicting testimony with relation to a material fact, without the benefit of any corroborative or diminutive evidence which either enhances or undermines the credibility of either of the witnesses. Both witnesses were credible. It has been the Court's experience that most disputes of this nature do not involve any intentional misstatement of facts; rather, they involve mis-recollections by one or both witnesses. In the instant case, the Court resolves this issue in favor of the defendant Daniel Perez, and finds that Mr. Perez is entitled to a credit of \$750.00 against the \$7,500.00 obligation imposed by the above-described judgment.

The remaining issue revolves around credits taken by JoyAnn Torrez on her 2002 and 2003 federal income tax returns. The testimony of both Ms. Torrez and Mr. Perez were consistent with respect to this issue as to the fact that these credits were taken by Ms. Torrez. Mr. Perez described them as credits for real property taxes which he paid on the parties' former marital residence; in her testimony, Ms. Torrez described these credits as being for interest on a home mortgage loan. The Court's review of the two tax returns at issue establishes that the credits to which both parties referred were taken on line 6 of Schedule A for real estate taxes:

\$973.00 in 2002, and \$1,169.00 in 2003. The total credits at issue are thus \$2,142.00 in gross. Mr. Perez testified that these two credits taken by Ms. Torrez were the result of an agreement between him and his former wife, by which he gave up one-half of the Schedule A itemized deduction for payment of real estate taxes which he paid in full because he had not made the \$250.00 monthly payments as required by the parties' dissolution judgment. Ms. Torrez, on the other hand, stated that her taking of these credits did not result from any agreement, but rather that she claimed them because Mr. Perez had not in fact made the required payments. Paragraph D of the parties' dissolution judgment required Mr. Perez to pay the mortgage payments and real property taxes and insurance as a condition of entitlement to reside in the former marital home. Neither party disputes that Mr. Perez in fact made the required payments of real property taxes. As a result, under the terms of the judgment, he alone would have been entitled to take the deduction for real property taxes, so whether or not Ms. Torrez' claiming of those credits resulted from an agreement or from her unilateral action, the result is the same: Mr. Perez gave up something of value to Ms. Torrez from which she derived a benefit not otherwise provided by the parties' dissolution judgment. However, the amount of the benefit to Ms. Torrez is not the gross amount of the two real property tax deductions which she claimed in Schedule A of her 2002 and 2003 federal income tax returns. Rather, the Court finds that the amount of credit to which Mr. Perez is entitled in this context is the net difference in income tax liability of Ms. Torrez for those two years which resulted from her claiming those deductions. Utilizing the other entries on the 2002 and 2003 tax returns, the Court has computed this difference to be \$270.00 for 2002 and \$288.00 for 2003, resulting in a total credit of \$558.00. The Court finds that Mr. Perez is entitled to a reduction of his obligation, sought to be enforced by the Trustee, in this amount.

Based upon the foregoing, the Court finds that the obligation of Daniel Perez to JoyAnn Torrez under the terms of the above-designated Judgment for Dissolution of Marriage, for

which he is obligated to the Chapter 7 bankruptcy estate of JoyAnn Torrez, is \$6,192.00.

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff, Stacia L. Yoon, Trustee of the Chapter 7 bankruptcy estate of JoyAnn Torrez, shall have and recover judgment against the defendant Daniel Perez in the amount of \$6,192.00, together with the costs of this action in the amount of \$150.00, and interest accruing on the total amount of \$6,342.00 from the date of entry of this judgment at the rate stated in the final judgment form entered by the Court.

Dated at Hammond, Indiana on June 2, 2005.

A handwritten signature in black ink, reading "J. Philip Klingeberger". The signature is written in a cursive, flowing style.

J. Philip Klingeberger
United States Bankruptcy Court

Distribution:
Stacia L. Yoon
Daniel Perez